School Board and Ministerial Appeal Guide

Student Services Series

NOVA SCOTIA
Education and Culture

SCHOOL BOARD AND MINISTERIAL APPEAL GUIDE

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Student Services Division

Purpose

The purpose of this guide is to help parents or guardians, students, and educators understand and prepare for a school board or ministerial appeal hearing under the Nova Scotia *Education Act,* the *Ministerial Education Act Regulations* and the Department of Education and Culture *Special Education Policy Manual.* Applicable sections from these documents can be found in the appendices.

Scope

Open, constructive communication between school staff and parents can resolve most disputes surrounding program planning. This guide relates to addressing unresolved disputes between a parent/guardian of a student with special needs and the school board respecting the proposed or existing Individual Program Plan (IPP) for the student. If parents and school staff can not reach agreement on the outcomes of the IPP or the placement of the student as determined by the IPP process an appeal can be made to the school board. Appeal beyond the school board is outlined in section 53 of the *Ministerial Education Act Regulations* (see appendix i).

General Considerations

- The appeal process must be accessible, straightforward, and fair.
- The student, parent/guardian and educator have the right to talk to and get help from a lawyer or other responsible persons.
- The appeal steps must be completed as quickly as is reasonably possible.
- The school board should promptly let the student, parent(s)/guardian(s), and educators know of each step and also provide them with the information necessary to respond fully.
- A school board appeal committee must exist in each school board. It is recommended that all members be present and participate fully throughout the hearing of an appeal and the making of a decision. School boards are strongly encouraged to include at least one member on the appeal committee who is external to the board.
- A parent or guardian must make the appeal for the student under 19 years of age. A younger student may appeal if he or she is living independently from parent(s)/guardian(s). Students who are 19 years or older may appeal on their own behalf.

- All persons involved in the appeal process should be open to a *reasonable* settlement of the appeal before or during the hearing.

School Board Appeal Process

The program planning team is responsible for ensuring that the program planning process has taken place as outlined in policies 2.2 and 2.6 (see appendix ii for applicable policies).

The IPP is signed at a meeting with the parents at which the team members from the school or representatives of that group review and discuss the program. The signatures indicate agreement on the IPP. In cases where a member of the program planning team does not agree with the outcomes and/or placement indicated on the program plan, an appeal procedure may be initiated. However, all efforts should be made to resolve the dispute through discussions and mediation before requesting a formal review (appeal).

The following flow chart and steps outline the process.

Step 1: A letter to the Superintendent of the Regional School Board is written to request an appeal. This should occur within 30 working days of the date of the establishment or review of the IPP. The reasons for the appeal and supporting documentation should accompany the request.

Step 2: Upon receipt of a request for an appeal, the Superintendent should forward these procedures and relevant school board policies and procedures to the parents/guardians requesting the appeal within ten working days.

Step 3: The Superintendent reviews the request to determine whether the program planning process has been followed (see Policies 2.2 and 2.6). If the process has been followed and the appeal is based on the outcomes and/or placement as outlined in the program planning process, the Superintendent requests the appeal committee set a date and time for the hearing. This hearing should be held as soon as practicable, however no later than 40 working days after the receipt of the request for appeal. If the decision of the Superintendent is to refer back to the program planning process, this is also communicated in writing to the appropriate parties. This may include a directive from the Superintendent to proceed with program planning where it has not occurred. It is recommended that this take place within 10 working days of receipt of the request for appeal. In some cases, boards may have designated dates for appeals during the year and these should be made known to parents as soon as practicable upon receipt of an appeal request.

Step 4: The school board appeal committee hears and decides the appeal. All parties to the appeal should be informed in writing of the decision. It is recommended that this take place within 10 working days of the appeal.

Responsibilities of the Participants in the Appeal Process

The chair of the school board appeal committee is responsible for ensuring that the committee hears the appeal. The chair must also ensure that proper procedures are followed that will allow members to make a prompt, fair and unbiased decision.

1. **A) Prior to the hearing, one should expect the chair to:**

    1. Inform promptly all parties of the place, date and time of the hearing. Expected duration of the hearing should also be stated.

    2. Provide those involved with all records and documentation relevant to the appeal and the process to be followed in reasonable time to review beforehand.

    3. Determine attendees at the meeting, including parent(s)/ guardian(s) (and advocate, if requested), involved parties from the school concerned, as well as others deemed relevant to the discussion as determined by the chairperson, in consultation with the parent(s) and school personnel

    4. Designate a person to record who is in attendance and the proceedings of the meeting.

    B) At the hearing, one should expect the chair to:

    1. Make introductions of all participants present.

    2. Outline the issue(s) being decided and the parameters which form the basis of the appeal.

    3. Set the rules of order to be followed during the Appeal Committee meeting.

    4. The chair should explain the role of the chair in the appeal and that of other representatives. This should include an outline of the extent to which each side may question one another and other witnesses.

    5. Inform those involved that the hearing will continue as follows:
        a) The person making the appeal (called the *appellant)* may open with a presentation or statement.
        b) The appellant may call witnesses and present evidence to support the appeal.

c) The person presenting the differential viewpoint (called the *respondent*) may make an opening presentation or statement.

d) The respondent may call witnesses and present evidence to support the respondent's position.

e) The appellant may make an oral or written summary of the reasons why the appeal should succeed.

f) The respondent may make an oral or written summary of the reasons why the decision should stand.

g) The appellant and the respondent and their witness(es) may present their information without undue interference and interruption.

C) After the hearing, one should expect the chair to:

1. State, in writing, the decision arrived at by the appeals committee as soon as possible outlining the facts of the case and the relevant legislation and/or policy. This decision should be forwarded to all parties as soon as possible. It is recommended that this take place within 10 working days of the appeal.

2. Should the parents/guardians appeal be unsuccessful, advise the parents/guardians of the regulations regarding the Ministerial Appeal Process (sections 53-61). In addition, the written decision of the school board appeal and a copy of the individualized program plan should be forwarded to the Division of Student Services within ten working days of the appeal hearing.

2. A) Prior to the hearing one should expect the respondent and appellant to:

1. Gather and make available to the chair pertinent records and documents in reasonable time to review and disseminate to involved parties in the appeal.

2. Inform the chair of those whom they wish to attend the meeting.

3. Ensure that information shared is kept confidential.

B) At the hearing one should expect the respondent and appellant to:

1. Arrive in time for the meeting.

2. Observe rules of order and time limits as outlined by the chair.

3. Be respectful of others and polite to all present.

An Appeal Checklist for the Person Making the Appeal

√ Pre-hearing Checklist

— Contact the school or school board to get copies of document(s) prepared about your case that may apply to the appeal issue. Gather any other documents that may assist you. (A list of documents may be useful.)

— Review the appropriate sections of the *Education Act, Regulations under the Education Act, School Board Appeal Process, School Board Special Education Policy Manual* and provincial *Special Education Policy Manual* that pertain to your situation.

— Speak to persons who may assist in the presentation of your information.

— Write out a summary of the facts and issues of your appeal, highlighting any new information that may support your position. Note the decision you believe the district appeals committee or school board should make. Set out the reasons for the desired outcome.

— Be sure that you, your representative(s) and/or witness(es) know the time and location of the hearing.

√ Hearing Checklist

— Arrive in plenty of time for your hearing.

— Meet before the hearing with any representative(s) that you have invited for support.

— Meet with your witness(es) before the hearing.

— Review documents before the hearing.

— Make your opening statements clearly and concisely. In point form, explain your reason(s) for appealing or responding. If you are presenting witnesses or documents, explain clearly how this evidence will help to explain or clarify your position.

— Present your documents and witnesses in the same sequence as your arguments.

— Be polite and clear when speaking to the chair and when questioning the other party or witness(es). Respect the other person's right to state their viewpoints.

Ministerial Appeal Process

Step 1: After receipt of the decision of the board level appeal, parents/board have 20 working days to make a written request for a Ministerial Appeal. This should be forwarded to the Minister of Education, Department of Education and Culture. The Department of Education and Culture reviews the student's Individualized Program Plan and the written decision of the school board appeal committee upon request for a Ministerial Appeal. (Note: This information should have been forwarded as outlined in 1(c)(2), "Responsibilities of the Participants in the Appeal Process". The request will be acknowledged in writing by the Department of Education and Culture.

Step 2: If the Minister agrees to the request, the parent will be informed in writing and a mutually agreeable date for the appeal sought. "School Board and Ministerial Appeal Procedures" will be forwarded to the parents/guardians when a date is set and a written confirmation of the date, place and time is sent to the parents/guardians and school board. The Department of Education and Culture will make every attempt to ensure that the Ministerial Appeal is heard within 40 working days of receipt of the appeal at the Department of Education and Culture.

If the Minister does not agree with the request a written response will be sent to the parents/guardians and school board indicating the reason (s) the request for appeal was denied.

Step 3: Supporting documentation must be submitted by parents/guardians and the school board in triplicate to the Department of Education and Culture at least 15 working days prior to the date of appeal. If documentation is received later than that date, it will be up to the discretion of the chair to hold the hearing on the date scheduled or to reschedule the hearing date. Department of Education and Culture will distribute documentation to parties so as to be received no later than 10 working days prior to the date of the appeal hearing.

Step 4: As per Regulation 61(2), the decision and order of the Board of Appeal shall be made and delivered to the parties and the Minister within 90 days, or as soon thereafter as practicable, from the date of appointment of the Board of Appeal.

Appendices

(I) Regulations, Sections 53-61

(ii) Policies 2.2 and 2.6

Appendices

Appendix i

Regulations under the Education Act

Sections 53-61

Board of Appeal—Special Education

53 Where a dispute has occurred between the parent of a student with special needs and the school board respecting the proposed or existing individualized program plan for the student, and the dispute

(a) concerns

(i) outcomes of the proposed plan, or

(ii) placement of the student; and

(b) has not been resolved by means of the school board appeal process,

the parent or school board may make a request in writing to the Minister asking the Minister to establish a Board of Appeal to provide a ruling on the program.

54 Upon receipt of a written request, the Minister may, as soon as practicable, appoint a Board of Appeal to hear the appeal and make a decision.

55 **(1)** A Board of Appeal shall consist of three members:

(a) one member, who is not an employee or school board member of the school board, named by the school board;

(b) one member, who is not a parent or relative of the student, named by the parent; and

(c) one member appointed by the Minister.

(2) The member of a Board of Appeal appointed by the Minister shall be the chair.

(3) A Board of Appeal shall make a decision concerning the dispute in respect of which the Board of Appeal was requested to be established under Section 53.

56 The chair of a Board of Appeal shall fix a time and place for the hearing and may request, in advance of the hearing,

(a) records and documentation that are to be submitted as evidence at the hearing; and

(b) the names of persons who will be called to give evidence.

57 The hearing of an appeal shall not be open to the public and no person will be permitted to be present other than the parties, their counsel and such other persons as the chair may require or permit to be present.

58 **(1)** The parties concerned may be represented at a hearing by counsel or any other person permitted at the hearing by the Board of Appeal pursuant to Section 57.

(2) The chair may adjourn any hearing at any time and from time to time.

(3) A Board of Appeal shall observe the confidentiality of all documents and records.

(4) The chair shall determine all questions arising during a hearing respecting procedure, or admissibility of evidence.

59 **(1)** Upon completion of a hearing, a Board of Appeal may, respecting the matters with which a dispute may be concerned pursuant to subclauses 53(a)(i) and (ii),

(a) confirm the program plan for the student; or

(b) order modification of the program plan for the student;

and

(c) order costs respecting the appeal to be apportioned between the school board and the parent.

60 A program plan for a student on whose behalf an appeal is made shall not be varied before a Board of Appeal has made its decision, unless by agreement of the parties.

61 **(1)** The decision of a Board of Appeal shall

(a) be written by the chair, and

(b) include reasons

(2) The decision and the order of a Board of Appeal shall be made and delivered to the parties and the Minister within 90 days, or as soon thereafter as practicable, from the date of appointment of the Board of Appeal.

(3) An order made by a Board

Appendix ii

Special Education Policy Manual

Policies 2.2 and 2.6

Policy 2.2

Each school board is responsible for establishing a process of identification, assessment, program planning and evaluation for students with special needs.

2.2 Guidelines

The school board is responsible for the implementation of this process; therefore, each procedural step should be documented in the school board's special education policy manual. School boards are encouraged to refer to the appropriate sections of the Department of Education and Culture's *Special Education Policy Manual*.

2.2 Sample Procedure

On the following pages is a sample outline, in graphic and written form, of how a program planning process might be implemented. It is not intended as a prescribed approach, but rather as an illustration.

Identification, Assessment and Program Planning Process

Stage 1 – Screening and Identification

This stage may be initiated by a variety of people. Some children and students may come to school with a myriad of assessments and programming information from other agencies or from another school. Some students may have been in school for a number of years and their special needs may be identified at a later stage by the classroom teacher who regularly observes students in the learning situation. The planning process can be initiated at any time based on student need.

If a student has been identified as needing an individual program plan before entry to school, the team may wish to start the process at step 3, "Referral to Program Planning Team," to avoid delay.

Parents are expected to be involved at the beginning of the process. Classroom teachers, parents, students and outside agency personnel and resource teachers are all possible initiators at this stage. The principal should be aware of any communication concerning students at this stage.

Stage 2 – Exploration of Instructional Strategies

After a student has been identified as requiring additional planning to meet his/her needs, the classroom teacher uses available material and human resources to explore a variety of strategies in the learning process. In all schools there is a wealth of experience to draw upon. In exploring alternative methods of working with students, teachers may also wish to consult supervisors, school psychologists or other available personnel. The key at this stage is to be as creative as possible in determining a wide variety of behavioural and/or curriculum strategies to meet student needs while ensuring accurate record keeping in terms of the outcome of utilizing these approaches. Determining why a method doesn't produce the desired outcome can yield as much information as one that does. Co-operation and collaboration among professionals and parents are essential at this stage.

The identification, assessment and program planning process may not go beyond this stage for many students as their needs may be met through ongoing evaluation and monitoring in the classroom. (Policy 2.4)

Stage 3 – Referral to Program Planning Team

If the classroom teacher requires further support to meet the needs of a student, he/she may wish to refer to the program planning team.

The format of the referral depends on school and district/regional procedures. In some cases the initiator of the referral may be required to have certain types of information available for the principal in order to make an informed decision whether or not to select team members and set a date for the program planning team meeting. Information required may include anecdotal information, observation records, informal assessment, interviews with the student and involved agencies, school records or any other information available that may be of help in program planning. Care should be taken not to use outdated or irrelevant assessment data.

Stage 4 – Program Planning Team Meeting

The program planning team must ensure that the problem or difficulty facing the student and/or teachers and parents is clarified before proceeding with planning. The reason for referral does not always match the team's clarification of the problem and careful problem solving at this stage can prevent unnecessary or inappropriate steps being taken.

Team members should be those who have responsibility for the student's learning. The team should always include the principal or vice-principal, teachers involved and parents/guardians. (See policy 2.4) These members form the core of the team. The selection of additional members depends on the needs of the student and on the personnel resources of the school district and community. In cases where there are many teachers involved, as in high school, reports can be gathered from teachers for presentation at the team meeting; however, key personnel should be present. In some cases this may include the student, especially at a high school level when career/transitional decisions are being discussed. Every attempt should be made to encourage parents to feel comfortable in presenting their views of the student's strengths and needs.

The team meeting provides an opportunity for members to come together to clarify, given all available information, the student's strengths and needs and to decide on future actions to be taken in terms of program planning. **The meeting should not be a forum for teachers, administrators, and other agency personnel to present a completed program to the parents.** If this is done, the parents become outsiders to the process and do not have the opportunity to affect decision making in any meaningful way. Together, the members should discuss the information each has observed and collected. Concerns should be expressed openly and information presented, without judgmental rebuttal. However, in cases where differences of opinion occur, the chairperson would act as mediator in the process.

The team decides whether or not to proceed with development of an individualized program plan (IPP). The meeting may highlight the need for a change in instructional strategies or evaluation methods while maintaining the objectives of a prescribed course. When this occurs, a statement outlining adaptation of strategies, evaluation methods and support services required should be recorded in the student's cumulative file. However, when the objectives of provincially approved curriculum must be changed to meet the needs of the student, an IPP becomes necessary. An IPP may focus on behavioral as well as curriculum outcomes to address student behaviours which may inhibit learning. At this point, the chairperson designates responsibility areas to the team members to develop the individualized program plan according to the priorities, goals and approaches set at the meeting, or to collect further information if necessary.

Stage 5 – Program Plan Developed

The program planning team uses information gathered to write the program plan. Those that have responsibility for implementation of parts of the plan should be involved in developing the objectives, deciding on strategies and evaluation procedures. The individual program plan should include the following components (Policy 2.6):

- a summary of student strengths and needs
  - annual individualized outcomes (goals)
  - specific individualized outcomes (objectives)
  - recommended services
  - responsibility areas
  - review dates
  - signatures

Stage 6 – Implementation of Program Plan

Team members are assigned responsibility areas and monitor student progress. The teacher responsible for teaching the student is also responsible for evaluating the student's progress in that curriculum area (Policies 2.5 and 2.6).

Stage 7 – Monitoring

Teachers and designated team members are required to evaluate individual program plans in order to assess student progress continually.

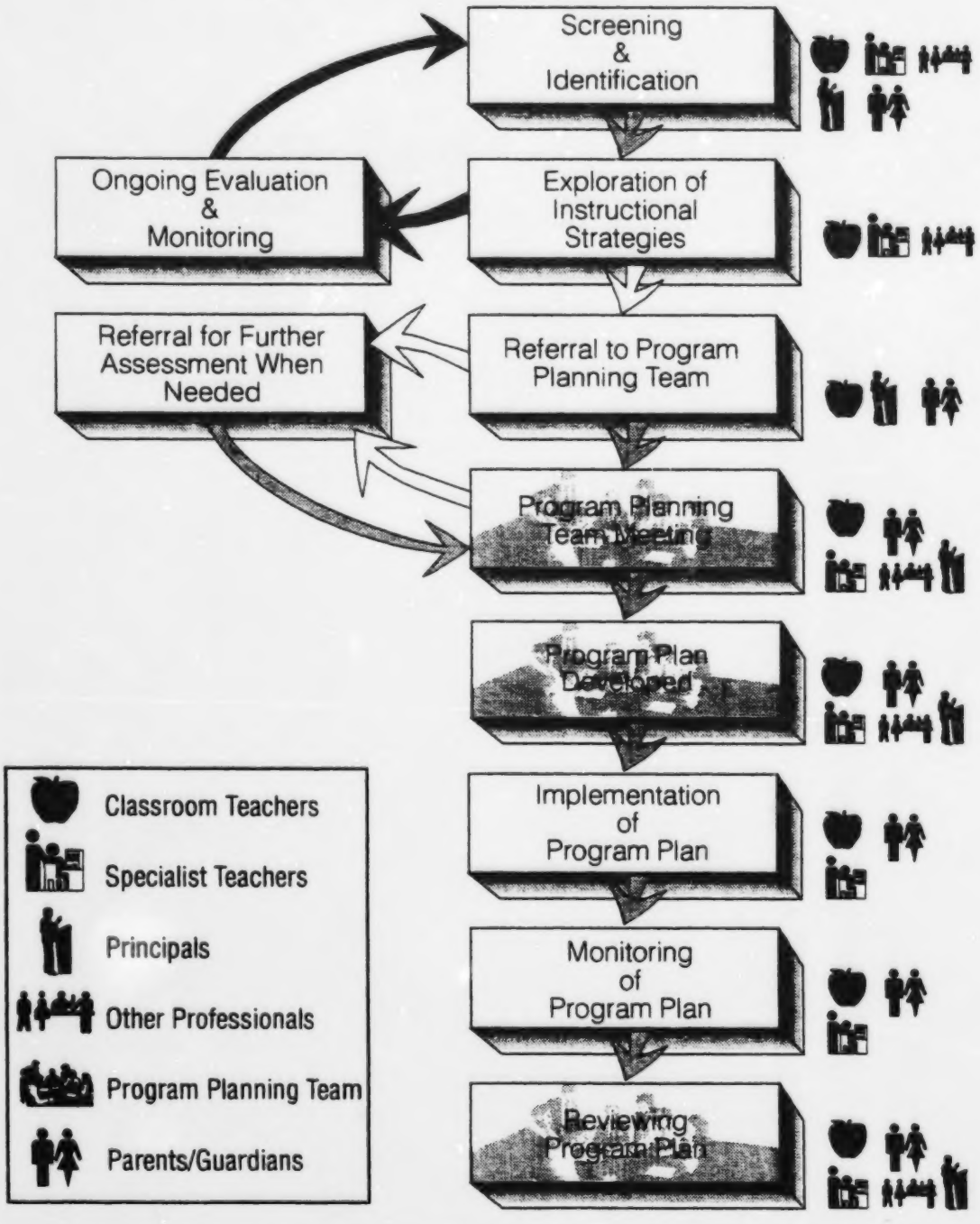
Stage 8 – Review of Program Plan

The program planning team is responsible for reviewing the student's progress in the plan and meeting to discuss changes when necessary. The program plan should be reviewed at least twice annually.

2.2 **Education Act:** Sections 25, 26, 38
Other References: Policy 2.4, 2.7
Public School Programs 1.9.3, Department of Education and Culture, 1993-95.

Identification, Assessment & Program

Planning Process



Policy 2.6

An individual program plan (IPP), based on the student's strengths and needs, will be developed and implemented for every student for whom the provincial curriculum outcomes are not applicable and/or attainable.

2.6 Guidelines

Each school district will establish procedures and guidelines for the development and implementation of individual program plans.

Teaching practice necessarily includes the use of a variety of teaching strategies to enable students to meet or to extend their learning beyond the designated outcomes. The manipulation of additional variables such as time, classroom organization and evaluation techniques will also be necessary to meet individual student needs. Provided the designated outcomes are not substantially altered, these procedures do not require an individual program plan, although specific changes should be documented in the student's cumulative file, e.g. oral evaluation in place of written evaluation, curriculum compacting (Policy 2.2, Stage 4).

When the manipulation of instructional variables is not sufficient to address student needs in the context of the prescribed curriculum, the program planning team is responsible for the development of an individual program plan. Program plans should be developed in the context of the broad curriculum outcomes for each core program. For students whose special needs include non-academic areas, the individual program plan should detail the outcomes involved and the supports and services needed to enable the student to reach these outcomes. (Appendix i: Definitions)

2.6 Procedures

The components of the individual program plan for each student should include the following:

1. A summary of student strengths and needs

The summary should include information on the student's physical, behavioral, social, and academic strengths and needs. A brief summary of the types of assessments used in determining strengths and needs should be included in the individual program plan, while more complete results/reports should be kept in the student's confidential file.

2. Annual individualized outcomes (goals)

Annual individualized outcomes are statements of expected achievement over a one-year period. These statements are estimates of future performance based on past achievement, present performance, and priority areas of desired development. Priority areas should be established in consultation with parents through the program planning team process to ensure a co-ordinated effort between the home and school.

3. Specific individualized outcomes (objectives)

Specific individualized outcomes are statements outlining specific steps which lead to the attainment of the broader outcomes. Specific outcomes are arranged according to the developmental process involved and the expected progression toward identified broad outcomes. The specific outcomes are the basis for the evaluation of the student's growth toward attainment of the annual individualized outcomes. Specific outcomes should be grouped under curriculum outcomes in each program where applicable.

4. Recommended services

These services may be divided into three categories:

a) educational strategies (e.g. specific instructional strategies, organizational techniques, evaluation procedures)
b) special materials/equipment (e.g. computers, alternative formal materials, optical aids, specially designed furniture);
c) human resources (e.g. resource teachers, speech-language pathologists, physiotherapists, teacher/student assistants, mentors, etc.).

5. Responsibility areas

Specific responsibilities for teaching, modifying/extending and evaluating objectives must be assigned to individuals with the appropriate professional competence. However, the overall responsibility for the evaluation of the plan rests with the team as a whole. The team is responsible for ensuring that the plan outlines a comprehensive and cohesive approach to meeting student needs.

6. Review dates

The program planning team is responsible for setting dates for the review of the overall plan. However, individual team members are responsible for the ongoing evaluation of their designated responsibility areas. The overall plan should be reviewed at least twice in each year. Dates for the review of the program plan should be set at each program planning team meeting.

7. Signatures

The IPP is signed at a meeting with the parents at which the team members from the school or representatives of that group review and discuss the program. The signatures indicate agreement on the IPP. In cases where parents/guardians do not agree with the program plan, an appeal procedure may be initiated. However, all efforts should be made to resolve disputes through discussions, and mediation before a formal review (appeal) is required. (Policy 1.8). If the school is experiencing difficulty in having the parents attend a meeting, the Supervisor of Special Services should be notified. Parents should be provided a copy of the IPP.

2.6 **Education Act:** Sections 25, 26, 38, 64 (2)
Other References: *Public School Programs* 1.9.3, Department of Education and Culture, 1993-95.
The Nova Scotia Student Cumulative Record Folder Completion Instructions, Department of Education and Culture, 1988.